

No. 83-24

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In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

CHARLES TATE, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT*

**SUPPLEMENTAL MEMORANDUM FOR
THE UNITED STATES**

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When we filed the petition for a writ of certiorari in this case, the Court had just recently granted the petitions in *United States v. Leon*, cert. granted, No. 82-1771 (June 27, 1983); *Massachusetts v. Sheppard*, cert. granted, No. 82-963 (June 27, 1983); and *Colorado v. Quintero*, cert. granted, No. 82-1711 (June 27, 1983), cert. dismissed (Dec. 12, 1983). That trilogy of cases presented the Court with the opportunity to consider the adoption of a "reasonable mistake" modification to the exclusionary rule in two separate contexts — *Leon* and *Sheppard* present the issue as it relates to judicially-authorized searches, while *Quintero* involved a warrantless search. Because the present case raises the same issue in *both* contexts (the warrantless stop of respondents' station wagon and the judicially-authorized search of a residence), we suggested (Pet. 8) that the petition should be held and disposed of as appropriate in light of the Court's decisions in *Leon*, *Sheppard*, and *Quintero*.

In light of respondent Quintero's death, however, and the resultant dismissal of the petition in *Colorado v. Quintero*, we believe that it would now be appropriate to grant the present petition rather than to hold it for the decisions in *Leon* and *Sheppard*. *Quintero* was the only one of the three previously-granted cases that involved a warrantless search, and thus the Court is now left with a less complete opportunity to consider the "reasonable mistake" modification in its various ramifications than it previously had. As we noted in our petition in this case (at 8), it is our submission that some form of the "reasonable mistake" modification is appropriate for each situation, but the reasons supporting modification have slightly different analytic foundations depending on the context.

We therefore suggest that the petition in this case should be granted now (although the Court may wish to limit argument to the warrantless search issue, the second question presented in the petition). While it is of course not possible for this case to be argued with *Leon* and *Sheppard*, which have been scheduled for oral argument on January 17, 1984, there is no reason why the present case could not be argued later this Term, thereby permitting the Court, as it apparently intended in granting the petition in *Quintero*, to consider in a single Term the proposed modification to the exclusionary rule in the context of both warrantless and judicially-authorized searches. Because we previously filed a lengthy consolidated brief in *Leon*, *Sheppard*, and *Quintero*, we are prepared to brief the present case on an expedited basis that would permit argument to be scheduled this Term.

For the foregoing reasons, the petition for a writ of certiorari should be granted and the case scheduled for oral argument this Term.

Respectfully submitted.

REX E. LEE
Solicitor General

DECEMBER 1983